89-398

Supreme Court, U.S.
FILED
SEP 5 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

DEXTER DRAKE COFFIN, III,
Petitioner,

-vs-

CLARENCE L. JACKSON, JR., et al.,
Respondents.

PETITION FOR A WRIT OF CENTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DEXTER DRAKE COFFIN, III
2115 Wisteria Drive
Charlottesville, Virginia 22901

Petitioner, pro se

September 5, 1989

510

QUESTIONS PRESENTED

1. Are the Due Process and Equal Protection rights of a criminal defendant violated where a prosecutor induces a guilty plea and monetary consideration in return for favorable sentencing considerations which he, thereafter, refuses to fulfill?

LIST OF PARTIES

The parties to the proceedings below were the petitioner, DEXTER DRAKE COFFIN, III, and EDWARD W. MURRAY, Director of the Virginia Department of Corrections, and the ATTORNEY GENERAL OF VIRGINIA. However, on June 21, 1989 the Virginia Parole Board entered an Order granting petitioner his release on parole. Therefore, CLARENCE L. JACKSON, Jr., Chairman of the Virginia Parole Board, has replaced EDWARD W. MURRAY as a party respondent in this action. The ATTORNEY GENERAL OF VIRGINIA shall remain a party respondent.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioner, DEXTER DRAKE COFFIN, III, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Fourth Circuit entered in the above action on May 8, 1989.

CITATIONS TO OPINIONS BELOW

The decision of the United States Court of Appeals for the Fourth Circuit was filed on May 8, 1989. The decision was not published. The unpublished decision of the United States District Court for the Western District of Virginia was filed on December 7, 1988. An Order was entered by the Chief Justice on May 31, 1989 granting an extension of time to file this Petition. Copies of the decisions and the Order are included in the Appendix to this Petition.

JURISDICTION

The opinion of the United States Court of Appeals for the Fourth Circuit was filed on May 8, 1989. An order granting an extension of time within which to file this Petition was entered by the Chief Justice on May 31, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The decisions of the courts below are based on Blackledge v. Allison. 431 U.S. 63

(1977).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment V to the Constitution of the United States:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when an actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall have property be taken for public use, without just compensation.

made applicable to the states by Sections 1 and 5 of Amendment XIV to the Constitution of the United States:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the

> privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

and enforced by Title 28, United States Code, Section 2254:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgement of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

STATEMENT OF THE CASE

On November 7, 1985 petitioner appeared for trial in a Charlottesville, Virginia circuit court on two indictments charging that he had unlawfully obtained a controlled substance in violation of Virginia Code § 18.2-258.1. Following

selection of the jury, which, in its Memorandum Opinion, the district court found "the Circuit Court took great lengths to insure (was) unbiased," a recess was held during which petitioner, his trial counsel, his corporate attorney from Hartford, Connecticut, petitioner's wife, his Episcopal Rector, and the Assistant Commonwealth's Attorney conferred. The record before the district court contains affidavits executed by the petitioner, his wife, petitioner's corporate attorney, and Rector all essentially agreeing that the Assistant Commonwealth's Attorney charged with prosecution represented that if petitioner would effectuate restitution of some $20,000 owed by his former business in an unrelated matter then pending, the Commonwealth would be amenable to certain favorable sentencing considerations in the two criminal cases then being heard. Specifically, in return for the restitution

sought, the Commonwealth would enter into an agreement providing petitioner with the opportunity of securing medical treatment and therapy for his addiction illness in lieu of active imprisonment. It should be noted that, in addition to the affidavits before the district court, the record also contains a letter to petitioner from his trial counsel dated November 26, 1986 which largely agrees with the affidavits executed by those others present during the discussions held. The record below reveals that, although the restitution sought by the Commonwealth was completed in a timely fashion, there was no mention of this understanding between the parties to the trial court as the Commonwealth refused to ratify the agreement until after restitution had been accomplished. Based upon the representations made by the Commonwealth and the understanding reached by the parties, the record reflects that

when petitioner's trial resumed petitioner changed his plea to guilty to both indictments. During the arraignment the following colloquy appears in the record:

> Q All right, do you believe that you have any plea agreement from the prosecution? Are they to do something for you or make a recommendation or anything of that nature? Show that he confers with counsel.
>
> (Defendant conferred with counsel at this time.)
>
> A No, Your Honor.

Transcript of Hearing held November 7, 1985, pp. 32-33.

The record before the district court reveals that at sentencing on December 23, 1985 the Commonwealth, although acknowledging full restitution in the unrelated matters, asked the trial court to "sentence (petitioner) to a long...term of years in the penitentiary," Respondent's Exhibit C, at 64, and argued against petitioner's request that he be hospitalized for his addiction illness

instead of being ordered to serve active confinement.

In response to the district court's show cause order at the onset of the § 2254 proceedings, the Respondents advanced only a general denial as to this claim. Thereafter, the Respondents secured an affidavit from trial counsel in support of their motion to dismiss the action, however, that affidavit largely supports petitioner's claim that his change in plea was a result of the representations made by the Commonwealth and is consistent therein with trial counsel's November 26, 1986 letter to petitioner. In its Memorandum Opinion, the district court made no reference to this crucial ground for relief. Appendix A1.

On appeal to the Circuit Court petitioner, focusing on the prejudice he suffered as a consequence of the Commonwealth's actions and citing

prevailing case authority in the Fourth Circuit which holds that traditional principles of contract and agency must be applied to cases involving circumstances such as those present in the instant action, urged that the case be remanded for an evidentiary hearing. Nevertheless, on May 8, 1989 the Fourth Circuit "den(ied) a certificate of probable cause to appeal and dismiss(ed) the appeal on the reasoning of the district court." Appendix A2. Thereafter, petitioner filed an Application For Extension Of Time To File Petition For Writ of Certiorari To The United States Court Of Appeals For The Fourth Circuit relative to this matter. On May 31, 1989 the Chief Justice entered an Order granting that Application. Appendix A3.

REASONS FOR GRANTING THE WRIT

I.

WHEN THE PROSECUTION INDUCES A GUILTY PLEA BY PROMISING TO RATIFY AN AGREEMENT RELATIVE TO SENTENCING CONSIDERATIONS

FOLLOWING THE PERFORMANCE OF AN ACT BY THE DEFENDANT WHICH IS OF INTEREST TO THE PROSECUTOR, THE PROSECUTION MUST BE HELD TO ITS REPRESENTATIONS LEST THE DEFENDANT IS DENIED DUE PROCESS OF LAW.

It is by now axiomatic that an otherwise valid plea of guilty is vitiated where it is been the result of an unfulfilled prosecutorial promise. Santobello v. New York, 404 U.S. 257 (1971).

In Santobello this Court confronted facts similar to those present in the case at bar in that Santobello understood at the time of his plea that the prosecution would make no sentencing recommendation to the trial court in return for not contesting the Government's criminal charge. With that understanding in mind, Santobello entered a guilty plea. However, by the time of the sentencing hearing both the prosecutor and trial judge had been replaced and the trial court was asked to

impose the maximum term permitted upon Santobello. Although in imposing the recommended maximum sentence the trial court indicated it was ignoring the prosecution's recommendation, this Court found that the relevant issue was Santobello's reliance on the first prosecutor's representations that the State would refrain from making any recommendation as to sentence and that Santobello was therefore entitled to relief be it resentencing before a different judge or the withdrawal of the guilty plea.

The instant case falls squarely within the Santobello rule. It is established that petitioner was in the midst of proceeding to trial when discussions commenced between the parties relative to the disposition of both the criminal charges then being tried and an unrelated matter involving debts owed by his former business. There is no dispute that the

prosecution sought payment of significant sums in the unrelated matter and, further, it was conceded to the trial court that those payments had been made. It is evident that petitioner changed his plea to guilty after the recorded recess and there is ample evidence that he did so predicated solely on the representations made by the prosecutor in the course of the discussion held during that recess. The record from the trial court discloses that at the time of sentencing the Commonwealth sought extensive active incarceration instead of concurring in petitioner's request that he be hospitalized despite the fact that petitioner had complied with the Commonwealth's request that he both change his plea to guilty and repay the $20,000 sought. Petitioner was sentenced to four years in prison.

As stated supra, in its return the Respondents did not deny that the

Commonwealth's representations to petitioner induced him to change his plea. Indeed, this allegation is corroborated by several affidavits as well as certain statements made by counsel at the time of sentencing. "(W)hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." Santobello, supra, at 262 (emphasis added).

As in Santobello, in this case there was no written plea agreement and no reference to the parties' understanding at the time of the entry of the plea. While it could therefore be argued that there was no "agreement" per se, the fact remains that specific inducements and representations were made by the Commonwealth to petitioner which resulted in his change of plea in the midst of his

trial. Under the circumstances presented in this case, petitioner respectfully asserts that the Commonwealth's actions at trial and sentencing caused an erosion of the voluntary character of petitioner's guilty plea to the extent that it became an unconstitutional basis for the trial court's judgement and sentence. Because of the importance of the issues presented in this case, it is respectfully submitted that review by this Court would be appropriate.

II.

IN THE ABSENCE OF A RECORDED PLEA AGREEMENT, THE CONCEPT OF FUNDAMENTAL FAIRNESS DICTATES THAT IN REVIEW OF THE PARTIES' UNDERSTANDING COURTS SHOULD APPLY TRADITIONAL CONTRACT PRINCIPLES LEST THE DEFENDANT BE DENIED DUE PROCESS OF LAW.

Rule 3A:8(c)(2), Rules of Supreme Court of Virginia, provides that every plea "agreement" in a felony case be reduced to writing. Arguably, therefore, petitioner

did not have the benefit of a plea "agreement" within the meaning of the term under Virginia law. However, the United States Court of Appeals for the Fourth Circuit has heretofore held that when the terms of a bargain or the authority for its offer are at issue, traditional principles of contact and agency law should be applied. United States v. Harvey, 791 F. 2d 294 (4th Cir. 1986); Hartman v. Blankenship. 825 F. 2d 26 (4th Cir. 1987). In the very least this case falls squarely within the Harvey holding.

As established by the pleadings and evidence before the district court, at the time of the plea discussions between the parties the Commonwealth was seeking approximately $20,000 in restitution from petitioner in an unrelated business matter. Although the prosecution refused to ratify the agreement either in writing or on the record in the trial court prior to those

funds actually being paid, the evidence reveals that restitution was accomplished shortly after the conclusion of the proceedings on November 7, 1985 in accordance with the understanding between the parties. The record shows that, in return for the entry of a guilty plea to the indictments and the restitution, the Commonwealth represented that it would not oppose petitioner's request of the trial court at sentencing that he be permitted the opportunity to seek medical treatment for his addiction illness instead of being confined in the state penitentiary. This record further discloses that the prosecution reneged on its representations and instead sought substantial active imprisonment. It should also be noted here that the record before the district court contains evidence that petitioner was, in fact, innocent of at least one of the criminal allegations being tried on

November 7, 1985.

Where, as here, the prosecution is responsible for the erosion of an otherwise constitutionally valid guilty plea, reviewing courts should apply traditional principles of contract and agency in determining the appropriate remedy to be accorded the defendant. Applying these principles to the case at bar, it becomes abundantly evident that 1) the petitioner complied fully with the content of his understanding with the Commonwealth; 2) that petitioner was in no way responsible for the action taken by the Commonwealth at the time of sentencing on December 23, 1985; and 3) that the understanding or agreement was breached by the Commonwealth in a material regard. Given the facts and circumstances present in this case, petitioner respectfully asserts that he is entitled to withdraw his plea and proceed to trial. Because of the importance of

this issue, petitioner respectfully suggests that review by this Court would be appropriate.

CONCLUSION

Because of the importance to the public of the issues presented herein, this petition for certiorari should be granted.

Respectfully submitted,

DEXTER DRAKE COFFIN, III

/s/Dexter D. Coffin, III
DEXTER DRAKE COFFIN, III
2115 Wisteria Drive
Charlottesville, VA 22901

Petitioner, pro se

September 5, 1989

Dec. 7, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

DEXTER D. COFFIN, III,
Petitioner,

v.

EDWARD W. MURRAY,
ATTORNEY GENERAL OF THE
STATE OF VIRGINIA,
Respondents.

Civil Action No. 87-0054(C)

MEMORANDUM OPINION

By: Hon. James M. Michael, Jr.
U. S. District Judge

Dexter D. Coffin, III, a Virginia inmate, has filed a pro se petition seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254, based on an allegedly unconstitutional conviction entered by the Circuit Court of the City of Charlottesville. Coffin plead guilty on November 7, 1985 to two counts of obtaining a controlled substance by

misrepresentation, deceit or subterfuge in violation of § 18.2-258.1 of the Virginia Code. He was sentenced on December 23, 1985 to a period of incarceration of four years, two years on each of the two counts. As grounds for relief petitioner alleges the following:

(1) That § 18.2-258.1 of the Virginia Code under which he was prosecuted is unconstitutional;

(2) That petitioner was denied effective assistance of counsel because his counsel:

(a) "Erroneously advised petitioner to plead guilty when he was in fact, not guilty and that his counsel told him to answer "affirmatively" questions propounded by the Court relative to the commission of the offense charged and as to the plea of guilty being offered the Court;

(b) Failed to give the Commonwealth notice of alibi and raise an alibi defense;

(c) Failed to "research" and apprise the Petitioner of any defenses he might have as a result of amnesia and "advance a defense of amnesia";

(d) Failed to develop evidence relative to a defense of insanity or irresistible impulse;

(e) Failed to seek a "thorough evaluation" of the Petitioner's physical and mental condition;

(f) Failed to "advance a defense predicated on the error and/or unskillfulness" of the Petitioner's physicians;

(g) Failed to move for a change of venue;

(h) Failed to adequately consult with the Petitioner prior to trial;

(i) Recommended that the Petitioner plead guilty "despite...notice to counsel of medical information and documents...which raised possible defenses";

(k) Did not "fully" advise Petitioner as to his right to trial by jury, the elements of the offenses which must be proved by the Commonwealth, and the Commonwealth's burden of proof;

(l) Failed to "fully and completely" correct errors contained in the pre-sentence report.

(3) The Court erred in relying on "false and misleading information contained in the pre-sentence report;

(4) The Court erred in not granting a continuance at the sentencing hearing;

(5) That his pleas of guilty were involuntarily entered;

(6) The Trial Court erred in not advising him of his rights to trial by jury, the right to confront witnesses, and the right against self-incrimination;

(7) That the judgment of the Trial Court is "unconstitutional and contrary to law;"

(8) That his sentences are unreasonable and "shock human sensibilities;"

(9) The Court erred in not granting a motion to educe his sentence.

Respondents, by counsel, have moved to dismiss the petition and have submitted a brief in support of that motion. Petitioner has responded to the motion and has moved for "an emergency expedited evidentiary hearing" on his claims. The Court has carefully reviewed the record of

the state court proceedings and has considered the legal arguments on each claim. Therefore, the motion to dismiss is now ripe for a decision by the Court.

STATUTE UNCONSTITUTIONALLY VAGUE AND AMBIGUOUS

Petitioner's first argument is that the statute under which he was convicted is unconstitutionally vague and ambiguous. The Court notes at the onset that the acts of the state legislature are presumed constitutional and the burden is on the party challenging the statute to establish his claim. New York State Club Ass'n., Inc. v. City of New York, 108 S. Ct. 2225, (1988). To withstand a constitutional challenge based on vagueness and ambiguity, the statute must be such that an "ordinary person can know how to avoid unlawful conduct." United States v. Sullivan, 332 U.S.689 (1948).

The statute in this case provides in pertinent part that "it shall be unlawful for any person to obtain or attempt to obtain any drug...by fraud, deceit, misrepresentation or subterfuge." VA. CODE

§ 18.2-258.1 (1988). The statute further provides that "it shall be unlawful for any person, for the purpose of obtaining any controlled substance or marijuana, to falsely assume the title of, or represent himself to be, a...physician...Id. This statute is clear and unambiguous. The Court concludes that a simple reading of its language would permit any reasonable person to know what conduct is prohibited. Petitioner has failed to meet his burden, and this claim must fail.

INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner also challenges his conviction on the basis of ineffective assistance of counsel. The right to counsel guaranteed by the Sixth Amendment is the right to effective assistance of counsel. Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977). The test of effectiveness is two-pronged. First, the petitioner must show that his counsel's

representation fell below objective standards of reasonableness. Strickland v. Washington, 466 U.S.668, 689 (1984). Secondly, the petitioner must demonstrate that he suffered actual prejudice because of the ineffectiveness. Id., at 694. On each of the twelve allegations of ineffective assistance, the petitioner fails to establish one or both of these elements. Consequently, the Court finds that there was no deficiency of constitutional magnitude in the representation by the trial attorney.

The record indicates that at the time of his pleas, the petitioner was asked by the trial court if he was satisfied with the services of his attorney and he answered he was. (Hearing transcript p. 21) The Court recognizes, however, that this statement by the petitioner is not dispositive of his claim of ineffective assistance of counsel. Therefore, the

Court will address each of the allegations individually.

Petitioner first alleges that his attorney's advice to plead guilty was wrong, and that his attorney told him to answer "affirmatively" questions about his understanding of the elements of the offenses and the guilty pleas. An attorney's advice to plead guilty is not to be judged by retrospectively considering whether it was right or wrong. Instead, the focus is whether that advice was within the range of competence of attorneys in criminal cases. McMann v. Richardson, 397 U.S.759 (1970). In the case at bar, the petitioner faced other charges in other jurisdictions for the same type of offense. The petitioner was faced with the testimony of an accomplice he used to acquire some of the drugs and of eyewitnesses at the location of the first incident. Given such

circumstances, it is abundantly clear that the advice to plead guilty was within the range of competence normally demanded of attorneys in like situations.

Petitioner alleges ineffective assistance because his attorney did not advance an alibi defense. The record reveals that the Commonwealth had evidence that Coffin personally picked up the controlled substances on the first occasion and that he had an accomplice pick up the drugs in the second incident. Once again, the court concludes that counsel's advice to plead guilty was neither unreasonable nor incompetent. Furthermore, given the Commonwealth's evidence, the court concludes that there is no basis upon which to assert that the decision to forego an alibi defense was prejudice. Id. Furthermore, the petitioner by entering voluntary pleas of guilty waived his right to raise an alibi defense. Tollet v.

Henderson, 411 U.S.58 (1973); United States v. Matthews, 472 F.2d 1173 (4th Cir. 1973).

Three of petitioner's allegations center upon trial counsel's failure to defend based on (1) amnesia, (2) irresistible impulse, and (3)a doctor's error or malpractice. The Court finds no dereliction in the attorney's failure to explore these defenses. The basis alleged by the petitioner for these defenses is that he informed counsel that he had been addicted to drugs for a long period of time. A similar allegation of ineffective assistance was made and rejected by the Fourth Circuit in Springer v. Collins, 586 F. 2d 329 (4th Cir. 1978). cert denied 440 U.S.923 (1989); In that case, the Fourth Circuit held that the Sixth Amendment does not require that an attorney who has evidence that his client was intoxicated on drugs at the time of the offense must

always obtain a psychiatric examination of the client and investigate the possibility of an insanity defense. In fact, the record reveals that counsel already had a number of psychiatric reports and evidence on hand. Counsel's motion for a continuance to provide time for another psychiatric exam was denied by the trial court. The trial court clearly acted within its discretion in not seeking further psychiatric tests. The attorney in this case performed in a competent and professional manner, and his failure to present spurious defenses does not render his representation ineffective. Furthermore, the court once again notes that there is no evidence of actual prejudice to the petitioner. Considering the statements given by an accomplice and eyewitnesses as well as other evidence available to counsel there is every reason to believe that the competence issue was

handled in an appropriate manner.

Petitioner next alleges that the attorney's failure to move for a change of venue was not constitutionally reasonable. The purpose of a motion for a change of venue is to obtain an unbiased jury. Stamper v. Baskerville, 531 F. Supp. 1122 (1982). Here, there is no evidence that an unbiased jury was unavailable in Charlottesville even though some jurors had knowledge of the offenses. The record shows that the Circuit Court took great lengths to insure an unbiased jury. Moreover, there is no evidence of actual prejudice to the petitioner because he pled guilty, thereby waiving any right to a jury trial.

Petitioner alleges that his attorney failed to confer adequately regarding the plea and the plea agreement. The record reflects that the petitioner informed the court that he fully understood what he was

doing. (Hearing transcript at pgs. 30-32). There is no evidence in the record, however, to indicate that the pleas would not have been entered if he had conferred more extensively with his counsel. See Hill v. Lockhart, 474 U.S. 52 (1985). For the same reasons, the petitioner's allegations regarding the attorney's failure to advise him of his right to trial by jury and to advise him of the elements of the offense must fail. The petitioner stated at the time of his plea that he understood the elements of the offense. Hearing transcript at p. 30).

Petitioner also alleges that the attorney failed to interview witnesses for the Commonwealth prior to trial. The petitioner fails to identify any witnesses who he believes should have been interviewed but were not. Initially, there is no evidence that any such failure to interview certain witnesses influenced the

petitioner to plead guilty. The attorney is only required to make appropriate legal and factual investigations to determine if matters could be developed which would aid in the defense of his client. See Snead v. Smith, 670 F.2d 1348 (4th Cir. 1982). The record contains no evidence that Petitioner's counsel did not adequately investigate the legal and factual avenues which he determined were necessary for presenting a defense. Petitioner has, therefore, failed to establish that any failure to interview unidentified witnesses caused him actual prejudice.

Petitioner alleges that his counsel's failure to correct errors in the presentence report rendered his assistance ineffective. As with the allegation regarding failure to interview witnesses, the allegation is broad and conclusory and fails to set forth any alleged errors which were not corrected. Also, errors in the

report were mentioned at the time of sentencing and corrected at the hearing where the petitioner was represented by a competent attorney. The Court also notes that there is no constitutional right to a presentence report in state court, Lawson v. Riddle, 401 F. Supp. 410 (W.D. Va. 1975), and that a presentence report need not be completely accurate as long as it is not materially untrue. United States v. Johnson, No. 81-6018 (4th Cir., April 15, 1982) (unpublished opinion).

The Sixth Amendment does not require errorless representation. A petitioner must establish that his counsel's errors were so egregious that they can be deemed to have resulted from neglect or ignorance rather than from informed professional deliberation. See Strickland, supra. The record in this case reveals clearly that petitioner received competent, constitutionally effective assistance of

counsel. Petitioner's allegations to the contrary must fail.

SENTENCE BASED ON FALSE/MISLEADING INFORMATION IN PRESENTENCE REPORT

Petitioner alleges that the sentence which he received for these offenses was based on certain unspecified mistakes in the presentence report. As stated above, these objections were not raised at the time of sentencing. A petitioner cannot refuse to follow the State's contemporaneous objection rule and then ask a Federal court to consider the issue. Wainwright v. Sykes, 433 U.S. 72 (1977). Furthermore, as discussed more fully below, there is no evidence of prejudice because the sentence was not unfair. As a result, this claim must also be dismissed.

COURT ERRED IN DENYING PETITIONER'S MOTION FOR A CONTINUANCE

Petitioner alleges that the court

erred in not granting a continuance at the sentencing hearing. In determining whether a continuance was within a trial court's discretion, the court must proceed on a case-by-case basis. United States v. Inman, F.2d 738 (4th Cir. 1983). The record indicates that the court had a presentence report on which to base its decision, as well as numerous documents containing psychiatric evidence of petitioner's condition. The trial court was well within its discretion in denying the motion for a continuance.

GUILTY PLEAS NOT KNOWING, VOLUNTARY AND INTELLIGENTLY MADE

Petitioner now alleges that his pleas of guilty were not knowing, voluntary and intelligently made. The record in this case, however, does not support this allegation. The State court questioned the petitioner and found as a matter of fact

the pleas were freely and voluntarily made after consultation with competent counsel. The petitioner stated that he understood the elements of the charges and understood the range of sentences which might be imposed by the court. Petitioner was asked if he had any questions regarding matters affecting his constitutional rights, giving petitioner the opportunity to clear up any confusion. Statements of the accused at an arraignment and plea that facially demonstrate the plea's validity are conclusive absent a compelling reason why they should not be. Via v. Superintendent, Powhatan Correctional Center, 643 F. 2d 167 (4th Cir. 1981). In order to meet this burden of producing a compelling reason, the petitioner must show that the plea was, on account of a misunderstanding, duress, or a misrepresentation by others, so involuntary as to make it a "constitutionally inadequate basis for

imprisonment." Hartman v. Blankenship, 825 F.2d 26, 29 (4th Cir. 1987), quoting Blackledge v. Allison, 431 U.S. 63, 74-75 (1977). The petitioner has failed completely to meet this burden, and this claim must be dismissed.

COMMISSION OF OFFENSES RESULTED FROM DRUG ADDICTION

The petitioner also alleges that the commission of the offenses resulted from drug addiction. Although the trial court was advised at the time of the plea that the petitioner had a substantial medical and physiological dependency on drugs, this evidence was not offered as a potential defense at the time of the plea. As discussed above, the petitioner cannot fail to raise issues at the trial court level, plead guilty, and then raise those non-jurisdictional issues in a federal habeas corpus proceeding. Wainwright, supra.

Moreover, there is no support for the petitioner's apparent argument that his drug addiction would have been a valid defense to the charges of obtaining controlled substances by fraud. See, e.g., Springer v. Collins, 586 F. 2d 329 (4th Cir. 1978), cert. denied 440 U.S. 923 (1979). The court finds that this claim is also without merit.

Petitioner also alleges that the conviction was caused by physician's error. Again, petitioner cannot fail to raise issues at the trial court level, plead guilty, and then raise those non-jurisdictional issues in a federal habeas corpus proceeding. Wainwright, supra. The court finds no support for the petitioner's apparent argument that his drug addiction caused by his physicians would have been a valid defense to the charges of obtaining controlled substances by fraud and deceit. The court concludes that this claim is

without merit.

CONVICTION BASED ON DRUG ADDICTION WHICH ARISES FROM BRAIN DYSFUNCTION

Petitioner also bases his petition for habeas corpus relief on the allegation that his conviction was premised on drug addiction which arises from brain dysfunction. The record clearly reflects, however, that the conviction was based on the petitioner's plea of guilty and on his confessions. The test for determining whether a plea is involuntary due to the petitioner's impaired mental capabilities is whether his "mental faculties were so impaired by drugs when he pleaded that he was incapable of full understanding and appreciation of the charges against him, of comprehending his constitutional rights, and of realizing the consequences of his plea." United States v. Truglio, 493 F.2d 574, 578 (4th Cir. 1974). The petitioner

represented to the court at the time of his plea that he understood the charges, that he understood his constitutional rights and had no questions regarding those rights, and that he understood the consequences of pleading guilty. Consequently, the petitioner's claim that he was convicted because of drug addiction should be dismissed.

SENTENCE IS CRUEL AND UNUSUAL PUNISHMENT

Petitioner's other grounds for his petition for habeas corpus relief deal with the sentence which was imposed for his offenses. As described above, petitioner was sentences to four years imprisonment (2 years on each of two counts). Review of sentence length is virtually proscribed where, as here, the sentence imposed is within the statutory range. Hutto v. Davis 454 U.S. 370 (1982). In any event, the sentence is not excessive and is certainly

not unconstitutional. The trial court was within its discretion to deny petitioner's motion to reduce his sentence. As a result, this claim must also be dismissed.

CONCLUSION

For the reasons stated above, the court concludes that the petition fo habeas corpus relief in this case should be dismissed. As appropriate order consistent with this memorandum opinion shall be entered this day.

ENTER: This 7th day of December 1988.

/S/ James H. Michael, Jr.
U. S. DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 89-7007

DEXTER D. COFFIN, III
Petitioner - Appellant

v.

Edward W. Murray;
Attorney General of the
State of Virginia
Respondents - Appelles

Appeal from the United States District Court for the Western District of Virginia, at Charlottesville, James H. Michael, Jr., District Judge. (C/A No. 87-54-C-M)

Submitted: March 31, 1989
Decided: May 8, 1989

Before PHILLIPS AND MURNAGHAN, CIRCUIT JUDGES, AND BUTZNER, Senior Circuit Judge.

Dexter D. Coffin, III (Appellant Pro Se.).
Linwood Theodore Wells, Jr. (OFFICE OF THE ATTORNEY GENERAL) for Appellees.

PER CURIAM:

Dexter D. Coffin, III, seeks to appeal the district court's order refusing habeas corpus relief pursuant to 28 U.S.C. § 2254. Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we deny a certificate of probable cause to appeal and dismiss the appeal on the reasoning of the district court. Coffin v. Murray, C/A No. 87-54-C-M (W.D. Va. Dec. 7, 1988). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

DISMISSED

Supreme Court of the United States

No. A-952

Dester Drake Coffin, III,
Petitioner

v.

Edward W. Murray, et. al.

O R D E R

UPON CONSIDERATION of the application of the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including September 5, 1989.

/s/ William H. Rehnquist
Chief Justice of the United States

Dated this 31 day of May 1989.